

show that there is no genuine issue as to any material fact and that the moving party is entitled to a Summary Decision and Order as a matter of law.

(d) *Legal effect.* A Summary Decision and Order upon all the issues being adjudicated shall constitute the Initial Decision of the Presiding Officer and may be appealed to the Commission in accordance with §1025.53 of these rules. A Summary Decision, interlocutory in character, may be rendered on fewer than all issues and may not be appealed prior to issuance of the Initial Decision.

(e) *Case not fully adjudicated on motion.* A Summary Decision and order that does not dispose of all issues shall include a statement of those material facts about which there is no substantial controversy and of those material facts that are actually and in good faith controverted. The Summary Order shall direct such further proceedings as are appropriate.

§ 1025.26 Settlements.

(a) *Availability.* Any party shall have the opportunity to submit an offer of settlement to the Presiding Officer.

(b) *Form.* Offers of settlement shall be filed *in camera* and the form of a consent agreement and order, shall be signed by the respondent or respondent's representative, and may be signed by any other party. Each offer of settlement shall be accompanied by a motion to transmit the proposed agreement and order to the Commission. The motion shall outline the substantive provisions of the agreement and state reasons why it should be accepted by the Commission.

(c) *Contents.* The proposed consent agreement and order which constitute the offer of settlement shall contain the following:

- (1) An admission of all jurisdictional facts;
- (2) An express waiver of further procedural steps and of all rights to seek judicial review or otherwise to contest the validity of the Commission order;
- (3) Provisions that the allegations of the complaint are resolved by the consent agreement and order;
- (4) A description of the alleged hazard, noncompliance, or violation;

(5) If appropriate, a listing of the acts or practices from which the respondent shall refrain; and

(6) If appropriate, a detailed statement of the corrective action(s) which the respondent shall undertake. In proceedings arising under Section 15 of the Consumer Product Safety Act, 15 U.S.C. 2064, this statement shall contain all the elements of a "Corrective Action Plan," as outlined in the Commission's Interpretation, Policy, and Procedure for Substantial Product Hazards, 16 CFR part 1115.

(d) *Transmittal.* The Presiding Officer may transmit to the Commission for decision all offers of settlement and accompanying memoranda that meet the requirements enumerated in paragraph (c) of this section. The Presiding Officer shall consider whether an offer of settlement is clearly frivolous, duplicative of offers previously made and rejected by the Commission or contrary to establish Commission policy. The Presiding Officer may, but need not, recommend acceptance of offers. Any party may object to the transmittal to the Commission of a proposed consent agreement by filing a response opposing the motion.

(e) *Stay of proceedings.* When an offer of settlement has been agreed to by all parties and has been transmitted to the Commission, the proceedings shall be stayed until the Commission has ruled on the offer. When an offer of settlement has been made and transmitted to the Commission but has not been agreed to by all parties, the proceedings shall not be stayed pending Commission decision on the offer, unless otherwise ordered by the Presiding Officer or the Commission.

(f) *Commission ruling.* The Commission shall rule upon all transmitted offers of settlement. If the Commission accepts the offer, the Commission shall issue an appropriate order, which shall become effective upon issuance.

(g) *Commission rejection.* If the Commission rejects an offer of settlement, the Secretary, in writing, shall give notice of the Commission's decision to the parties and the Presiding Officer. If the proceedings have been stayed, the Presiding Officer shall promptly issue an order notifying the parties of the resumption of the proceedings, including

any modifications to the schedule resulting from the stay of the proceedings.

(h) *Effect of rejected offer.* Neither rejected offers of settlement, nor the fact of the proposal of offers of settlement are admissible in evidence.

Subpart D—Discovery, Compulsory Process

§ 1025.31 General provisions governing discovery.

(a) *Applicability.* The discovery rules established in this subpart are applicable to the discovery of information among the parties in any proceedings. Parties seeking information from persons not parties may do so by subpoena in accordance with § 1025.38 of these rules.

(b) *Discovery methods.* Parties may obtain discovery by one or more of the following methods:

- (1) Written interrogatories;
- (2) Requests for production of documents or things;
- (3) Requests for admission; or
- (4) Depositions upon oral examination.

Unless the Presiding Officer otherwise orders under paragraph (d) of this section, the frequency of use of these methods is not limited.

(c) *Scope of discovery.* The scope of discovery is as follows:

(1) *In general.* Parties may obtain discovery regarding any matter, not privileged, which is within the Commission's statutory authority and is relevant to the subject matter involved in the proceedings, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(2) *Privilege.* Discovery may be denied or limited, or a protective order may be entered, to preserve the privilege of

a witness, person, or governmental agency as governed by the Constitution, any applicable Act of Congress, or the principles of the common law as they may be interpreted by the Commission in the light of reason and experience.

(3) *Hearing preparation: materials.* Subject to the provisions of paragraph (c)(4) of this section, a party may obtain discovery of documents and tangible things otherwise discoverable under paragraph (c)(1) of this section and prepared in anticipation of litigation or for hearing by or for another party or by or for that other party's representative (including his attorney or consultant) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable without unique hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the Presiding Officer shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party.

(4) *Hearing preparation: experts.* Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of paragraph (c)(1) of this section and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

(i)(A) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, to state the substance of the facts and opinions to which the expert is expected to testify, and to provide a summary of the grounds for each opinion.

(B) Upon motion, the Presiding Officer may order further discovery by other means upon a showing of substantial cause and may exercise discretion to impose such conditions, if any, as are appropriate in the case.

(ii) A party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for